THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.24804 OF 2006

DATED: 1st DECEMBER, 2006.

Between :

V. Malleswara Rao and another. .. Petitioners

And

A.P. Housing Board, Gruhakalpa,
Mojamjahee Road, Hyderabad,
Rep. by its Vice-Chairman & Commissioner.,
And another. .. Respondents

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ORDER :

In response to the tender notice issued by the 2nd respondent dated 25-9-2004 for sale of four plots including Plot No.2-B (Phase-I), Bhavanipuram, Vijayawada, the petitioner and 17 others jointly participated in the auction held on 15-10-2004 and were declared as the successful bidders. It is stated that on the next day they paid 1/4th of the amount being Rs.28 lakhs. Thereafter by proceedings dated 8-11-2004 the auction was confirmed in their favour and they were called upon to pay balance sale consideration of Rs.82,12,744/- on or before 30-1-2005 failing which the amounts already paid would be forfeited. It is stated that since the high tension electricity lines were laid by A.P.S.P.D.C.L. in the site purchased by the petitioners the said land was virtually made not useful for any construction and therefore they made a representation to the 2nd respondent to take steps for removal of the poles. However, no action was taken by APSPDCL or the 2nd respondent. In spite of the same, the petitioners paid a sum of Rs.1 lakh which was accepted by the 2nd respondent.

Thereafter, by letter dated 9-5-2005 the petitioners requested the 2nd respondent to grant No Objection Certificate (NOC) to enable them to avail financial assistance from the Overseas Capital Corporation (India), New Delhi. The said Corporation also addressed a letter dated 16-3-2006 informing the 2nd respondent that the petitioners were sanctioned loan by mortgaging the plot allotted by

the 2nd respondent and requesting to issue No Objection Certificate.

No such NOC was granted, but on the other hand the 2nd respondent directed the petitioners to pay the entire amount due with interest. In compliance with the same the petitioners paid a total sum of Rs.41,62,774/- . While so, the 1st respondent issued the impugned notification dated 22-11-2006 inviting fresh tenders for the plot which was already allotted to the petitioners. Aggrieved by the said action, this writ petition is filed.

A detailed counter-affidavit has been filed by the 2nd respondent explaining that the allotment in favour of the petitioner dated 25-9-2004 was cancelled long back on 15-4-2006 duly forfeiting the amount already paid by the petitioners. It is also explained that as per the terms and conditions of sale the highest bidder is required to deposit 25% of the bid amount apart from 1% of the auction expenses within 24 hours. The balance of 75% should be remitted within 3 months from the date of confirmation of auction. That apart, in case time for payment is extended beyond 3 months, simple interest at the rate of 10% on the balance amount due to the Board would be charged for a period of 3 months in default 25% of the bid amount and 1% of the auction expenses remitted by the successful bidder would be forfeited to the A.P. Housing Board and the plot would be put to re-auction. It is stated that in spite of the fact that the sale in favour of the petitioners was confirmed on 8-11-2004 and in spite of repeated reminders, the petitioners failed to make payments as per the terms and conditions of auction and therefore the 2nd respondent was constrained to cancel the allotment by order dated 15-4-2006.

I have heard the learned Counsel for both the parties in detail.

A perusal of the order of cancellation itself shows that the petitioners were reminded from time to time for payment of the balance, but the petitioners failed to comply with the same. May be that the petitioners had subsequently paid a sum of Rs.42 lakhs

towards sale consideration, but admittedly the same was beyond the time prescribed under the terms and conditions of the sale. At any rate, even after the said payment, a sum of about Rs.61 lakhs was due. The 2nd respondent vide letter dated 27-8-2005 called upon the petitioners to pay the said amount within one week making it clear that in default the amounts already paid would be forfeited and the plot would be put to re-auction. Thereafter, the 2nd respondent having waited for about 8 months cancelled the allotment in favour of the petitioner on 15-4-2006. I do not find any justifiable reason to hold that the said action of the 2nd respondent is either arbitrary or illegal.

However, the learned Senior Counsel appearing for the petitioners while pointing out that even after the notice dated 27-8-2005 the petitioners paid a sum of Rs.12 lakhs, contended that the fact that the 2nd respondent accepted the said amount without raising any objection implies that the action proposed under the letter dated 27-8-2005 was dropped and therefore it is not open to the 2nd respondent either to cancel the allotment or to forfeit the amounts already paid.

As noted above, admittedly the petitioner failed to comply with the terms and conditions of sale in spite of several opportunities granted by the 2nd respondent. There was a specific stipulation under the terms and conditions that in case of failure to adhere to the terms and conditions the allotment would be cancelled and the amounts paid would be forfeited. It is also relevant to note that the petitioners never challenged the order of cancellation dated 15-4-2006, but filed the present writ petition on 28-11-2006 questioning the consequential tender notice dated 22-11-2006 which itself shows that it is nothing but an attempt to interdict the sale proceedings.

At any rate, this writ petition is nothing but enforcement of rights under a contractual obligation which is not regulated by any Statute. The petitioners having voluntarily accepted the terms and conditions of the sale are bound by the same. In the absence of any

allegation of mala fides against any of the respondents, particularly since absolutely no case is made out to show that the action of the respondents is vitiated on account of arbitrariness or unreasonableness, the Writ of Mandamus under Article 226 of the Constitution of India cannot be maintained by a person who has admittedly failed to adhere to the terms and conditions agreed upon.

For the aforesaid reasons, the Writ Petition is dismissed. No costs.

However, this shall not preclude the petitioners to participate in the tender pursuant to the impugned notice if they so choose.

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G. ROHINI, J.

Dt. 1-12-2006

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